

# **Exhibit B**

DRAFT

THE HONORABLE JOHN H. CHUN

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

**CASE NO.: 2:23-cv-01495-JHC  
STIPULATION REGARDING  
PRIVILEGE LOGGING**

Plaintiffs Federal Trade Commission and the states of New York, Connecticut, New Hampshire, Oklahoma, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, and Wisconsin, acting by and through their respective Attorneys General (“Plaintiff States,” and together with the Federal Trade Commission, “Plaintiffs”) and Defendant Amazon.com, Inc. (“Amazon” or “Defendant”) (together, the “Parties”) hereby stipulate regarding the logging of privileged documents in this matter:

**Privilege Logging**

1. A producing Party shall create a privilege log of all responsive documents or ESI wholly redacted or fully withheld from production on the basis of a privilege or protection, unless otherwise agreed or excepted.

2. For documents redacted for privilege or protection, the Parties must produce a privilege log containing only the following information: the Bates number, an indication that

DRAFT

the document was produced in redacted form, the author/recipient or to/from/cc/bcc names, the subject matter or title, the date created, the type of privilege being asserted, the identity of the attorney or attorneys involved (if applicable), and the basis for the privilege. If an email is produced with redactions, the redactions should not obscure the headers (e.g., from, to, cc, bcc, subject, sent date and time, attachment file names) of the email or any embedded emails, unless the subject line contains information that is privileged or protected. If a non-email document is produced with redactions, the redactions should not obscure the equivalent of header information (including author, from, to, subject, sent date and time, attachment names, as applicable) unless the subject line contains information that is privileged or protected.

3. Privilege logs for documents fully withheld from production or otherwise fully redacted shall include a unique identification number for each document, indicate the Bates number of the document containing privileged material and those of any document family relationships, and state the claim asserted. Privilege logs shall be produced in Excel (.xls, .xlsx, or .xlsb) format unless not possible due to technical reasons such as the size of the privilege log, in which case the Parties agree to meet and confer to reach agreement on an alternative method of production or file format. For ESI, privilege log entries shall include the author/recipient or to/from/cc/bcc names; the subject matter or title; and date created. Unless otherwise stated in this stipulation, the producing Party shall include additional information necessary for evaluating the privilege claim asserted as required by the Federal Rules of Civil Procedure, including a description of the contents of the document sufficient to establish that the privilege or protection applies.

4. Where email threads are fully withheld from production on the basis of a privilege or protection, the producing party shall produce any lesser inclusive copies of the

DRAFT

1 email thread over which it does not claim the privilege or protection. The producing party must  
2 provide privilege log information for the unique most inclusive copy and related family  
3 members. For lesser inclusive copies and related family members, the producing party may  
4 produce only the following privilege log information: the Bates number of the document  
5 containing privileged material and those of any document family relationships, the Bates  
6 number of the associated unique most inclusive copy, the author/recipient or to/from/cc/bcc  
7 names, the subject matter or title, the date created, the type of privilege being asserted, the  
8 identity of the attorney or attorneys involved (if applicable), and the basis for the privilege.

9 5. A producing Party shall provide a rolling privilege log approximately six, nine,  
10 and twelve months after the commencement of fact discovery. A producing Party must provide  
11 a final privilege log no later than 30 days prior to the close of fact discovery. All times provided  
12 herein may be changed by agreement of all Parties.

13 6. Privilege logs produced during the Federal Trade Commission's investigation  
14 preceding this litigation may be used to challenge any assertion of privilege of any documents  
15 produced in the investigation and subsequently produced in this litigation. The fact that  
16 Plaintiffs did not challenge a privilege claim during the investigation shall not be used as the  
17 basis of a waiver or forfeiture argument.

18 7. The Parties agree that the following privileged or otherwise protected  
19 communications shall not be the subject of discovery and need not be placed on a privilege log:

- 20 a. Non-responsive, privileged documents attached to responsive documents.  
21 b. Privileged draft contracts.  
22 c. Draft litigation filings.  
23

DRAFT

8. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

9. Pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.

10. If a producing Party determines that it has produced documents or ESI upon which it wishes to make a claim of privilege, it shall give all counsel of record notice of the claim of privilege. The notice must identify each such document, unless the review requires additional time, in which case the producing Party shall notify counsel of record and shall provide a date by which it will provide the identification. If the producing Party claims that only a portion of a document is privileged, the producing Party shall provide a new copy of the document with the allegedly privileged portions redacted.

11. Upon receiving notice of a claim of privilege on a produced document, the notified Party, in accordance with Federal Rule of Civil Procedure 26(b)(5)(B), shall promptly sequester the specified information and any copies it has and shall not use or disclose the information until the claim is resolved. Copies of privileged documents or information that have been stored on electronic media that is not reasonably accessible, such as disaster recovery backup media, are adequately sequestered as long as they are not restored. If the notified Party disclosed the information before receiving notification of the privilege claim of the producing

DRAFT

1 Party, it shall take reasonable steps to prevent further use of such information until the claim is  
2 resolved.

3 12. If a Party wishes to dispute a claim of privilege on a produced document asserted  
4 under this Order, such Party shall promptly meet and confer with the producing Party. If the  
5 Parties reach an impasse, the non-producing Party may move the Court for an order compelling  
6 disclosure of the information. The Parties shall follow the procedures described in Federal Rule  
7 26(b)(5)(B). Pending resolution of the motion, the Parties shall not use the challenged  
8 information for any other purpose and shall not disclose it to any person other than those  
9 required by law to be served with a copy of the sealed motion.

10 13. The Parties will use reasonable efforts to provide the titles of Party employees  
11 and outside counsel in a name index provided by each producing Party, unless otherwise agreed  
12 to by the Parties. The name index shall be produced in Excel (.xls, .xlsx, or .xlsb) format unless  
13 an alternative format is agreed to by the Parties, and shall include an alphabetical list (by last  
14 name) of each name on the privilege log, identifying titles, company affiliations, the members  
15 of any group or email list on the log where practicable (e.g., the S-Team), and any name  
16 variations used in the privilege log used for the same individual. All attorneys acting in a legal  
17 capacity with respect to that particular document or communication will be marked with an  
18 asterisk or other designation agreed to by the Parties.

19 14. The producing party wishing to assert a claim of privilege retains the burden of  
20 establishing the applicability of the claimed privilege.

21 15. This stipulation and order does not preclude a party or non-party from  
22 voluntarily waiving any claims of privilege.  
23

DRAFT

1           16.     Privilege logs that were not produced in the first instance in this litigation, such  
2 as privilege logs that were previously provided in Plaintiffs' investigation or other matters  
3 involving Amazon, shall be produced pursuant to the privilege log protocols or agreements in  
4 those other matters. The parties reserve their rights to request more information for entries on  
5 those privilege logs, and to challenge any privilege claims asserted in those privilege logs.

DRAFT

Dated: XXX

Respectfully submitted,

s/ [DRAFT]

SUSAN A. MUSSER (DC Bar # 1531486)  
 EDWARD H. TAKASHIMA (DC Bar # 1001641)  
 DAVID B. SCHWARTZ (NY Reg. # 4947925)  
 DANIELLE C. QUINN (NY Reg. # 5408943)  
 EMILY K. BOLLES (NY Reg. # 5408703)  
 Federal Trade Commission  
 600 Pennsylvania Avenue, NW  
 Washington, DC 20580  
 Tel.: (202) 326-2122 (Musser)  
 (202) 326-2464 (Takashima)  
 Email: smusser@ftc.gov  
 etakashima@ftc.gov  
 dschwartz1@ftc.gov  
 dquinn@ftc.gov  
 ebolles@ftc.gov

*Attorneys for Plaintiff Federal Trade Commission*s/ Michael Jo*Counsel for Plaintiff State of Connecticut*

Michael Jo (admitted *pro hac vice*)  
 Assistant Attorney General, Antitrust Bureau  
 New York State Office of the Attorney  
 General  
 28 Liberty Street  
 New York, NY 10005  
 Telephone: (212) 416-6537  
 Email: [Michael.Jo@ag.ny.gov](mailto:Michael.Jo@ag.ny.gov)  
*Counsel for Plaintiff State of New York*

s/ Rahul A. Darwar

Rahul A. Darwar (admitted *pro hac vice*)  
 Assistant Attorney General  
 Office of the Attorney General of Connecticut  
 165 Capitol Avenue  
 Hartford, CT 06016  
 Telephone: (860) 808-5030  
 Email: [Rahul.Darwar@ct.gov](mailto:Rahul.Darwar@ct.gov)

s/ Alexandra C. Sosnowski

Alexandra C. Sosnowski (admitted *pro hac vice*)  
 Assistant Attorney General  
 Consumer Protection and Antitrust Bureau  
 New Hampshire Department of Justice  
 Office of the Attorney General  
 One Granite Place South  
 Concord, NH 03301  
 Telephone: (603) 271-2678  
 Email: [Alexandra.c.sosnowski@doj.nh.gov](mailto:Alexandra.c.sosnowski@doj.nh.gov)  
*Counsel for Plaintiff State of New Hampshire*

s/ Caleb J. Smith

Caleb J. Smith (admitted *pro hac vice*)  
 Assistant Attorney General  
 Consumer Protection Unit



Office of the Oklahoma Attorney General  
15 West 6th Street, Suite 1000  
Tulsa, OK 74119  
Telephone: (918) 581-2230  
Email: [caleb.smith@oag.ok.gov](mailto:caleb.smith@oag.ok.gov)  
*Counsel for Plaintiff State of Oklahoma*

Baltimore, MD 21202  
Telephone: (410) 576-6474  
Email: [Ghonick@oag.state.md.us](mailto:Ghonick@oag.state.md.us)  
*Counsel for Plaintiff State of Maryland*

s/ Jennifer A. Thomson  
Jennifer A. Thomson (admitted *pro hac vice*)  
Senior Deputy Attorney General  
Pennsylvania Office of Attorney General  
Strawberry Square, 14th Floor  
Harrisburg, PA 17120  
Telephone: (717) 787-4530  
Email: [jthomson@attorneygeneral.gov](mailto:jthomson@attorneygeneral.gov)  
*Counsel for Plaintiff Commonwealth of Pennsylvania*

/s Michael MacKenzie  
Michael Mackenzie (admitted *pro hac vice*)  
Deputy Chief, Antitrust Division  
Office of the Massachusetts Attorney General  
One Ashburton Place, 18th Floor  
Boston, MA 02108  
Telephone: (617) 963-2369  
Email: [michael.mackenzie@mass.gov](mailto:michael.mackenzie@mass.gov)  
*Counsel for Plaintiff Commonwealth of Massachusetts*

s/ Michael A. Undorf  
Michael A. Undorf (admitted *pro hac vice*)  
Deputy Attorney General  
Delaware Department of Justice  
820 N. French St., 5th Floor  
Wilmington, DE 19801  
Telephone: (302) 683-8816  
Email: [michael.undorf@delaware.gov](mailto:michael.undorf@delaware.gov)  
*Counsel for Plaintiff State of Delaware*

s/ Scott A. Mertens  
Scott A. Mertens (admitted *pro hac vice*)  
Assistant Attorney General  
Michigan Department of Attorney General  
525 West Ottawa Street  
Lansing, MI 48933  
Telephone: (517) 335-7622  
Email: [MertensS@michigan.gov](mailto:MertensS@michigan.gov)  
*Counsel for Plaintiff State of Michigan*

s/ Christina M. Moylan  
Christina M. Moylan (admitted *pro hac vice*)  
Assistant Attorney General  
Chief, Consumer Protection Division  
Office of the Maine Attorney General  
6 State House Station  
Augusta, ME 04333-0006  
Telephone: (207) 626-8800  
Email: [christina.moylan@maine.gov](mailto:christina.moylan@maine.gov)  
*Counsel for Plaintiff State of Maine*

s/ Zach Biesanz  
Zach Biesanz (admitted *pro hac vice*)  
Senior Enforcement Counsel  
Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1400  
Saint Paul, MN 55101  
Telephone: (651) 757-1257  
Email: [zach.biesanz@ag.state.mn.us](mailto:zach.biesanz@ag.state.mn.us)  
*Counsel for Plaintiff State of Minnesota*

s/ Gary Honick  
Gary Honick (admitted *pro hac vice*)  
Assistant Attorney General  
Deputy Chief, Antitrust Division  
Office of the Maryland Attorney General  
200 St. Paul Place

s/ Lucas J. Tucker  
Lucas J. Tucker (admitted *pro hac vice*)  
Senior Deputy Attorney General  
Office of the Nevada Attorney General  
100 N. Carson St.  
Carson City, NV 89701  
Telephone: (775) 684-1100

1 Email: [LTucker@ag.nv.gov](mailto:LTucker@ag.nv.gov)  
2 *Counsel for Plaintiff State of Nevada*

3 s/ Ana Atta-Alla  
4 Ana Atta-Alla (admitted *pro hac vice*)  
5 Deputy Attorney General  
6 New Jersey Office of the Attorney General  
7 124 Halsey Street, 5th Floor  
8 Newark, NJ 07101  
9 Telephone: (973) 648-3070  
10 Email: [Ana.Atta-Alla@law.njoag.gov](mailto:Ana.Atta-Alla@law.njoag.gov)  
11 *Counsel for Plaintiff State of New Jersey*

12 s/ Jeffrey Herrera  
13 Jeffrey Herrera (admitted *pro hac vice*)  
14 Assistant Attorney General  
15 New Mexico Office of the Attorney General  
16 408 Galisteo St.  
17 Santa Fe, NM 87501  
18 Telephone: (505) 490-4878  
19 Email: [jherrera@nmag.gov](mailto:jherrera@nmag.gov)  
20 *Counsel for Plaintiff State of New Mexico*

21 s/ Timothy D. Smith  
22 Timothy D. Smith, WSBA No. 44583  
23 Senior Assistant Attorney General  
24 Antitrust and False Claims Unit  
Oregon Department of Justice  
100 SW Market St  
Portland, OR 97201  
Telephone: (503) 934-4400  
Email: [tim.smith@doj.state.or.us](mailto:tim.smith@doj.state.or.us)  
*Counsel for Plaintiff State of Oregon*

s/ Stephen N. Provazza  
Stephen N. Provazza (admitted *pro hac vice*)  
Special Assistant Attorney General  
Chief, Consumer and Economic Justice Unit  
Department of the Attorney General  
150 South Main Street  
Providence, RI 02903  
Telephone: (401) 274-4400  
Email: [sprovazza@riag.ri.gov](mailto:sprovazza@riag.ri.gov)  
*Counsel for Plaintiff State of Rhode Island*

s/ Gwendolyn J. Cooley

Gwendolyn J. Cooley (admitted *pro hac vice*)

Assistant Attorney General

Wisconsin Department of Justice

Post Office Box 7857

Madison, WI 53707-7857

Telephone: (608) 261-5810

Email: [cooleygj@doj.state.wi.us](mailto:cooleygj@doj.state.wi.us)

*Counsel for Plaintiff State of Wisconsin*

**MORGAN, LEWIS & BOCKIUS LLP**

By: s/ DRAFT

Patty A. Eakes, WSBA #18888

Molly A. Terwilliger, WSBA #28449

1301 Second Avenue, Suite 2800

Seattle, WA 98101

Phone: (206) 274-6400

Email: [patty.eakes@morganlewis.com](mailto:patty.eakes@morganlewis.com)

[molly.terwilliger@morganlewis.com](mailto:molly.terwilliger@morganlewis.com)

**WILLIAMS & CONNOLLY LLP**

Heidi K. Hubbard (*pro hac vice*)

John E. Schmittlein (*pro hac vice*)

Kevin M. Hodges (*pro hac vice*)

Jonathan B. Pitt (*pro hac vice*)

Carl R. Metz (*pro hac vice*)

Carol J. Pruski (*pro hac vice*)

Constance T. Forkner (*pro hac vice*)

680 Maine Avenue SW

Washington, DC 20024

Phone: (202) 434-5000

Email: [hhubbard@wc.com](mailto:hhubbard@wc.com)

[khodges@wc.com](mailto:khodges@wc.com)

**COVINGTON & BURLING LLP**

Thomas O. Barnett (*pro hac vice*)

One CityCenter

850 Tenth Street, NW

Washington, DC 20001-4956

Phone: (202) 662-5407

Email: [tbarnett@cov.com](mailto:tbarnett@cov.com)

*Attorneys for Defendant Amazon.com, Inc.*